

COUNTY OF KAUAI
Minutes of Meeting
Open Session

Board/Committee:	LIQUOR CONTROL COMMISSION	Meeting Date	April 20, 2017
Location	Mo'ikeha Building, Meeting Room #3	Start of Meeting: 4:00 p.m.	End of Meeting: 5:02 p.m.
Present	Chair Jean Iida; Vice Chair William Gibson; Members: Shirley Akita, Maryanne Kusaka, Gerald Matsunaga, and Gary Pacheco Also: Liquor Control Staff: Director Gerald Rapozo, Private Secretary Cherisse Zaima; Deputy County Attorney Teresa Tumbaga		
Excused	Paul Endo		
Absent			

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SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Iida called the meeting to order at 4:02 p.m. with 6 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 6 members were present.	
Approval of the Agenda		Mr. Matsunaga moved to approve the agenda. Mr. Pacheco seconded the motion. Motion carried 6:0.
Continuance of Public Hearing	<p><u>NEW LIQUOR LICENSE</u> (continued from April 6, 2017 hearing):</p> <p><u>LILIKOI BAR & GRILL</u>: The hearing for Application No. 2017-067 filed on December 8, 2016 by Lilikoi Enterprises L.P. dba Lilikoi Bar & Grill for a Restaurant General (No live entertainment, no dancing) license located at 3501 Rice Street, Suite 208, Līhu'e, Kauai, Hawaii was opened on April 6, 2017 and continued to April 20, 2017 at 4:00 p.m. or shortly thereafter in Meeting Room #3 of the Līhu'e Civic Center, Mo'ikeha Building, 4444 Rice Street, Līhu'e, Kauai, Hawaii.</p> <p>Mr. Jacques Pautrat, owner, was present.</p>	

Mr. Pautrat stated that at the last hearing there were many concerns about the liquor license, and since then he has talked with the residents of the neighborhood, and have gotten to know them a little better. He noted that he has been operating his restaurant, Kalypso, in Hanalei for 11 years, and have never had any issues with the liquor license there; not even one problem. They provide approximately 45 jobs to the community members, and have much support from the community and friends. Mr. Pautrat stated he was not aware of all the trouble that occurred at the previous licensee's establishment, and guaranteed that his employees will not be allowed to do whatever they want, and will need to abide by the employee handbook. In addition, upon an employee being hired, they must sign an agreement that they will not be allowed to consume alcohol, or have after-hours parties at the establishment. Mr. Pautrat noted that he has agreed to close the kitchen earlier to accommodate the neighboring residents, and to serve the last drink at the bar earlier as well.

Mr. Pautrat explained that many physical changes have been made to the restaurant that currently work in his favor, such as the moving of the bar away from the open patio area to the opposite side of the restaurant, facing the Harbor Mall Courtyard. There will not be any televisions in the dining area of the restaurant, though he may have a few televisions in the bar area. However, since the bar has been relocated, the sound will travel into the Harbor Mall Courtyard rather than out toward the neighboring homes. He also noted that the previous licensee did not open the outer doors leading to the bathrooms, so the noise would bounce back outside to the parking lot. Mr. Pautrat will be opening the sliding doors to allow the sound to carry into Harbor Mall rather than out into the parking lot toward the homes.

Another major change he has made is to change out all of the equipment in the kitchen as some of the old equipment was not in proper working order, which resulted in the previous licensee leaving the kitchen windows that faced the homes open to accommodate a large fan. This blew all of the

	<p>noise toward the neighboring residences. With the new equipment installed, those windows will remain closed at all times. Mr. Pautrat added that he has invested about \$15,000 into the new kitchen system to keep the kitchen cool and silent.</p> <p>Mr. Pautrat addressed concerns related to parking, noting that currently the employees from establishments across the street are parking in the Harbor Mall lot. The landlord has ensure Mr. Pautrat that as soon as he begins paying rent at the establishment, he will be able to control the parking, which in turn will allow Mr. Pautrat to monitor his employees.</p> <p>Commissioner Matsunaga explained that he was not at the April 6, 2017 meeting when this hearing was initially opened, but stated for the record that he has read the minutes of the meeting. He noted that it seemed that the primary concern was the noise factor, and it is his understanding that Mr. Pautrat has had the opportunity to work with the petitioners, and have come to a resolution. Mr. Pautrat noted he believes they have convinced the majority of the petitioners to change their minds.</p> <p>Commissioner Akita stated that her understanding is that at the last meeting, the Commission accepted the petition signed by more than 50% of the registered voters, and asked whether this petition is still in effect. Director Rapozo explained that some of the petitioners who signed in opposition have changed their minds, and are now in support of the application. Commissioner Akita asked to clarify that what is currently on record is the petition for more than 50% to which Director Rapozo explained that at the last meeting the Commission continued the public hearing to allow the applicant time to meet with the petitioners.</p> <p>Ms. Christina Gaines provide testimony in support of the application. She explained that she resides in a home across the parking lot of the proposed establishment, and provided a secondary petition signed by some of the</p>	
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	<p>original petitioners who have reconsidered their stance after speaking with the applicant as well as the landlord to include some conditions. There are 12 signatures on this new petition in support of the application. Ms. Gaines stated she feels the applicant will be a good neighbor and do their best to maintain the peaceful nature of the neighborhood.</p> <p>Commissioner Matsunaga asked to clarify that the names included on the new petition are names that appeared on the original petition to which Ms. Gaines replied yes.</p> <p>Commissioner Akita asked to clarify that since this new petition has been submitted, they no longer have enough registered voters to warrant an automatic denial. Director Rapozo replied yes. Commissioner Kusaka asked whether a motion needed to be made to remove the original petition to which Staff explained that there was no motion to accept the original petition at the previous meeting, so no motion needs to be made to remove it. Commissioner Akita questioned whether the original petition had been accepted at the previous meeting to which Staff reiterated that no motion was made to do so. Director Rapozo added that the decision by the Commission was for a continuance of the hearing to allow the applicant time to work with the petitioners.</p> <p>Mr. Paul Pomroy provided testimony, noting he resides within the 500' radius of the proposed establishment. Mr. Pomroy stated he was speaking on behalf of those 5 residents who were still opposed to the liquor license: Maureen Lovell Obatake, Leslie Lovell-Obatake, James Obatake, James Packard, and Julie Packard Nakagawa. There are 3 main concerns they have that are the basis of their objections, which are as follows:</p> <ol style="list-style-type: none">1. The lack of security provided by Harbor Mall management, which they have expressed to the management.2. The general noise created by the mall, the businesses within the mall, and the traffic resulting from the mall.	
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	<p>3. The parking situation, which has a machine for parking validation, but no enforcement of it; anyone can enter and stay as long as they wish.</p> <p>Mr. Pomroy stated that Harbor Mall management has informed him that they will be addressing that, and are looking to have the parking lot function like a true restricted lot.</p> <p>Mr. Pomroy stated other than those 3 concerns, they would speak positively to approving the liquor license for Lilikoi Bar & Grill.</p> <p>Mr. Randall Palmeira provided testimony in support of the application, noting that at the previous meeting he was very opposed to the application. At that time there was not a lot of information on what the proposed establishment was going to be like, and the concern was that it would be like the previous establishment. Subsequent to the previous hearing, they were able to meet with Mr. Pautrat, and discuss his vision for the restaurant, which Mr. Palmeira liked. He noted that it would bring jobs to the community, and commented that Mr. Pautrat seems to have done some great things in moving the bar. He also noted that the concern about employees partying in the parking lot after hours has been addressed by Mr. Pautrat who informed them that his employees will need to abide by an employees' handbook. Mr. Palmeira believes Mr. Pautrat will enforce that, and would like to see this restaurant be successful.</p> <p>Commissioner Matsunaga asked to clarify whether the conditions noted on the new petition are satisfactory to both the applicant and the petitioners, to which both parties replied yes.</p> <p>Commissioner Akita stated that she feels the applicant has bent over backwards to accommodate the petitioners, and acknowledged that to do well in the restaurant business, timing is very important. She questioned whether closing the kitchen at 9:00 p.m. would be difficult. She commented</p>	
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	<p>that the restaurant is in an area zoned for this type of business, and hopes he is successful.</p> <p>Mr. Pautrat stated that when he signed the lease, he did not anticipate all of these problems considering it is in a commercially zoned area. There are other establishments in Harbor Mall that do hold liquor licenses, one of which is allowed to serve until 2:00 a.m., which does not seem to have been an issue. Mr. Pautrat stated he has invested a lot of time and money in this so he must move forward, but had he known there would be these issues, he would not have started this project there. He explained that he is from France, and misunderstood the culture of how to start a business here, acknowledging that he should have spoken with the neighboring residents first.</p> <p>Commissioner Pacheco stated for the record that though he was not present at the previous hearing, he has read the minutes of the April 6, 2017 meeting.</p> <p>The public hearing was closed.</p>	<p>Mr. Matsunaga moved to approve Application No. 2017-067, with the conditions that the kitchen will be closed for patrons at 9:00 p.m., and the last call for drinks will be at 9:30 p.m. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
Public Hearing	<p><u>NEW LIQUOR LICENSE:</u></p> <p><u>VERDE:</u> Application No. 2017-099 was filed on February 6, 2017 by Verde Restaurant LLC dba Verde for a Restaurant General (no live music, no dancing) license located at 4454 Nuhou Street, Līhu'e, Kauai, Hawaii.</p> <p>Ms. Maris Manzano, owner, was present. There were no objections to this application.</p> <p>In response to the Commissioners, Ms. Manzano explained where the restaurant will be located in Hokulei Village in Puhi.</p>	

	The public hearing was closed.	Mr. Pacheco moved to approve Application No. 2017-099. Mr. Gibson seconded the motion. Motion carried 6:0.
Violation Hearing	<p><u>THE MARKET</u>: Violation of Rule 10.2(a) Manager on duty, qualifications.</p> <p>Ms. Lee Ann Bergonio, Front Desk Manager, was present to represent the licensee, no counsel.</p> <p>Ms. Lee Ann Bergonio initially denied the charges, noting that on March 22, 2017 at 3:42 p.m. she was on the premises, and she does carry a red card. The Commission noted a discrepancy in dates and times in the heading of the investigator's report as well as on the Notice of Hearing, which stated the date and time of violation as March 22, 2017 3:42 p.m. Director Rapozo stated that the body of the investigator's report contains the correct date of the violation, which was March 21, 2017 at 6:48 p.m., explaining that the heading of the report reflected the time the violation was researched and verified by the investigator; the date and time on the Notice of Hearing incorrectly referenced that date as well.</p> <p>Commissioner Matsunaga asked whether Ms. Bergonio had a red card, and was on premise on March 21, 2017 at 3:42 p.m. to which she replied no.</p> <p>In response to Commissioner Gibson, Ms. Bergonio explained that immediately following the violation, she obtained her red card the very next day. On the day of the violation, an employee with a red card was on property, however, she had left for the day at 4:30 p.m. Immediately after that, Ms. Bergonio locked all of the cases containing alcohol, and put up signs stating no alcohol could be sold at that time. Once she obtained her red card, the cases were opened for alcohol sales only when she was on property; if she was not there, cases were locked and signs put up. The following Wednesday, March 29, she had her front desk agent, and night</p>	

	<p>auditor obtain their red cards along with two on-property supervisors, one of whom runs the Food & Beverage department. This ensures there is a red card holder on property during all hours of operation. In addition, on Wednesday, April 12, two more front desk agents obtained their red cards. Ms. Bergonio noted that their property is currently going through a transition, but she is planning to contact the Liquor Department to have a mass testing done for all managers and front desk staff. In the meantime, she is having them go individually as their schedules permit.</p> <p>Commissioner Kusaka asked whether this market is located in several different places to which Ms. Bergonio replied no, there is only one location next to the front desk at the Courtyard Marriott.</p> <p>Deputy County Attorney Teresa Tumbaga presented two options for the Commission and the licensee to consider, the first being that the licensee could admit to the charge on the correct date and time of March 21, 2017 at 6:48 p.m. as stated in the body of the investigator's report, which the Commission could then take action on. The second option being that the Notice of Hearing could be reissued with the correct date and time of the violation, and the hearing would then be moved to the next meeting, which the licensee would have to again appear for.</p> <p>Ms. Bergonio agreed to the first option, and admitted to the charges as stated in the body of the investigator's report reflecting the date and time of the violation as March 21, 2017 at 6:48 p.m.</p>	<p>Mr. Matsunaga moved that a fine of \$250 be imposed. Mr. Pacheco seconded the motion. Motion carried 5:1 (Nay - Akita)</p>
Approval of the Minutes	<u>MINUTES OF THE MEETING OF APRIL 6, 2017</u>	<p>Ms. Akita moved to approve the open and executive session minutes of March 16, 2017. Mr. Gibson seconded the motion. Motion carried 5:1 (Abstain – Kusaka)</p>

1.	<p><u>DIRECTOR'S REPORT:</u></p> <p>a) <u>INVESTIGATORS' REPORTS</u></p> <p>b) <u>INCOMING COMMUNICATIONS:</u></p> <ul style="list-style-type: none">(1) From Constellation Brands, Inc.(2) From MHW, Ltd.(3) From Avid Marketing Group(4) From Delicato Family Vineyards(5) Disturbance Reports from Kauai Beach Resort <p>c) <u>OUTGOING COMMUNICATIONS:</u></p> <ul style="list-style-type: none">(1) To Constellation Brands, Inc.(2) To MHW, Ltd.(3) To Avid Marketing Group(4) To Delicato Family Vineyards(5) To All Wholesale Licensees, Re: New Liquor License WB's Exclusive Lounge <p>d) <u>EMPLOYEES IN LICENSED PREMISES:</u> Managers and Assistant Managers – See Attachment</p> <p>e) <u>ACTIONS OF THE DIRECTOR:</u></p> <ul style="list-style-type: none">(1) GRAND HYATT RESORT & SPA(2) LIVING FOODS(3) MARK'S PLACE(4) ROB'S GOOD TIMES GRILL(5) SAFEWAY LIHUE(6) SHERATON KAUAI RESORT(7) EL AZTECA(8) MARK'S PLACE(9) WAIOLI CORPORATION	
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	<p>(10) NAWILIWILI YACHT CLUB</p> <p>f) <u>INFORMATIONAL MATTERS:</u></p>	<p>Mr. Matsunaga moved to receive Items 1(a) through (f). Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
2.	<p><u>COMMUNICATIONS TO RECEIVE FOR THE RECORD:</u></p> <p>Supplement to oral testimony given by County Attorney Mauna Kea Trask at march 16, 2017 Executive Session meeting</p>	<p>Mr. Pacheco moved to receive the communication. Mr. Gibson seconded the motion. Motion carried 6:0.</p>
3.	<p><u>CHANGE IN CORPORATE OFFICERS:</u></p> <p><u>THE CLUB AT KUKUI'ULA:</u> Addition of Dave Hutchinson as Assistant Secretary.</p>	<p>Mr. Pacheco moved to accept the change in corporate officer. Mr. Gibson seconded the motion. Motion carried. 6:0.</p>
4.	<p><u>VIOLATION REPORT:</u></p> <p><u>BAMBOO:</u> Violation of Rule 7.9(b) Manager Registration.</p>	<p>Ms. Akita moved to call licensee for violation hearing. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
	<p><u>EXECUTIVE SESSION:</u></p> <p>Attorney Tumbaga explained that Chair Iida and Deputy County Attorney Courson had requested the executive session to review a draft letter to the Salary Commission in support of the salary resolution under consideration which would effectively allow the salary cap increase currently scheduled for July 1, 2017, to be retroactively applied to July 1, 2016.</p> <p>Commissioner Akita stated that she was not here when the letter was presented to which Staff explained that this was the reason for having the executive session today. The purpose of this executive session would be for</p>	<p>Pursuant to HRS 92-5(2) (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held; and specifically to consider a draft letter related to the evaluation of the Director.</p>

	<p>the Commission to review the letter and determine whether or not they would like to submit it to the Salary Commission as a body, and if not, Chair Iida would submit on her personal behalf.</p> <p>Attorney Tumbaga noted that Salary Commission meets on April 27, 2017 at which time the resolution will be discussed.</p> <p>Commissioner Akita asked if the Chair could send the letter on her own to which Staff replied that Chair Iida could send it as an individual on her own, but if she is sending it as the Chair representing the Commission, it needs to be voted on by the Commission.</p>	<p>Mr. Pacheco moved to enter into Executive Session. Mr. Matsunaga seconded the motion. Motion carried 6:0.</p>
Return to Open Session		<p>The meeting resumed in open session at 5:08 p.m.</p>
Announcements	<p>Next Scheduled Meeting: Thursday, May 4, 2017 – 4:00 pm, Mo'ikeha Building, Meeting Room #3.</p>	
Adjournment		<p>Chair Iida adjourned the meeting at 5:09 p.m.</p>

Submitted by: _____
Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
Jean Iida, Chair